No. 17-965

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,

Petitioners,

—v.—

STATE OF HAWAII, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF EPISCOPAL BISHOPS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

I. IDENTITY AND INTEREST OF *AMICI CURIAE* 1

II. INTRODUCTION AND SUMMARY OF THE ARGUMENT 5

III. ARGUMENT 11

A. The First Amendment Establishment Clause Enshrines America's Longstanding Role as a Safe Haven for Refugees Fleeing Religious Oppression. 11

B. EO-3 Undermines the United States' Role as a Safe Haven for Refugees Fleeing Oppression. 14

C. The Orders Impede the Efforts of Religious Organizations to Render Aid to Refugees. 16

IV. CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Engel v. Vitale, 370 U.S. 421 (1962) 12, 14

Everson v. Bd. of Educ. of Ewing, 330 U.S. 1 (1947) 11, 12, 14

Hawaii v. Trump, 878 F.3d 662 (9th Cir. 2017) 16

IRAP v. Trump, 883 F.3d 233 (4th Cir. 2018) 9

McCreary Cnty. v. Am. Civil Liberties Union of Ky., 545 U.S. 844 (2005) 9

Reynolds v. United States, 98 U.S. 145 (1878) ... 14

Other Authorities

A. Ansari, N. Robertson, & A. Dewan, *World leaders react to Trump's travel ban*, CNN (Jan. 30, 2017), www.cnn.com/2017/01/30/politics/trump-travel-ban-world-reaction 15

Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says — and ordered a commission to do it 'legally'*, The Washington Post (Jan. 29, 2017), http://wpo.st/xzuY2 6

David Paulsen, *Olympia diocese welcomes refugees, sues to keep resettlement efforts alive* (Feb. 10, 2017), http://episcopaldigitalnetwork.com/ens/2017/02/10/olympia-diocese-welcomes-refugees-sues-to-keep-resettlement-efforts-alive.....17

Donald J. Trump, *Statement on Preventing Muslim Immigration* (December 7, 2015).....5

https://www.episcopalarchives.org/cgi-bin/acts/acts_search.pl?user_query=islam 4

James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html 13

Joint IOM-UNHCR Statement on President Trump's Refugee Order, U.N. High Comm'r for Refugees (Jan. 28, 2017), www.unhcr.org/en-us/news/press/2017/1/588bc4e34/joint-iom-unhcr-statement-president-trumps-refugee-order.html 15

Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans'*, Time (Dec. 21, 2016), http://time.com/4611229/donald-trump-berlin-attack.....6

M. Zapotosky, D. Nakamura, & A. Hauslohner, *Revised Executive Order Bans Travelers from Six Muslim-Majority Countries from Getting New Visas*, The Washington Post (Mar. 6, 2017), www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.1f6730369a62 10

President Donald Trump's News Conference, CNN, Feb. 16, 2017, http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript 6

Press Briefing by Secretary Sean Spicer, No. 18, The White House (Mar. 7, 2017), www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18 10

Rebecca Shabad, *Donald Trump says he's expanding his Muslim ban*, CBS News (July 24, 2016), http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban 6

S. Sengupta, *U.N. Leader Says Trump Visa Bans 'Violate Our Basic Principles,'* N.Y. Times (Feb. 1, 2017), www.nytimes.com/2017/02/01/world/trump-immigration-ban-un.html 15

T. Salim, *RI Regrets Trump's Muslim Ban*, The Jakarta Post (Jan. 30, 2017), www.thejakartapost.com/news/2017/01/30/ri-regrets-trump-s-muslim-ban.html 15

The Episcopal Church Statement on Interreligious Relations (2009), ¶10. https://www.episcopalchurch.org/library/document/statement-interreligious-relations 4

Rules

Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017) 6

Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,780, 82 Fed. Reg. 13210-11 (Mar. 6, 2017) 6

Treatises

PATRICIA U. BONOMI, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 36 (2003) 12

I. IDENTITY AND INTEREST OF *AMICI CURIAE*

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel, party, or person other than the amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties consented to the filing of this brief.

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The Episcopal Church is organized into 111 geographic dioceses, which include more than 7,000 congregations. Each Bishop, whose authority in his or her diocese is both sacramental and constitutional within the Episcopal Church, governs the diocese, together with local representative bodies.

Among the central tenets of the Episcopal Church are to welcome and assist strangers, especially those who are poor, sick, and most in need of help, to provide a safe haven for those seeking freedom from oppression, and to uphold the dignity of every human being. To those ends, the Episcopal Church has long supported a robust refugee resettlement program for those fleeing their countries to escape persecution, oppression, and war.

Another fundamental belief of the Episcopal Church is that the Church should engage in dialogue

and work with members of other religious communities so "that [we] may all be one."[2] To this end, the Church has adopted a number of resolutions over the years expressing support for the world-wide Islamic community and seeking mutual understanding among religious communities.[3] The Church believes that interfaith dialogue is essential to promote understanding and forestall fear among peoples of different faiths, cultures, and traditions. The Episcopal Church's Statement on Interreligious Relations states: "[F]ear is the opposite of truth, and fear has led some people of all religions to collude with, participate in, and justify political acts of violence and oppression which dishonor all concepts of the Sacred."[4] We must "respect the dignity of every human being."[5]

The Bishops earnestly believe that the President's travel ban orders (which are born of and feed on fear) impede the ability of Episcopalians to practice their faith and keep their baptismal covenant with God. As leaders in the Episcopal Church, as members of the broader faith community, and as active providers of refugee resettlement services, the Bishops have a deep interest in preserving this country's special status as a safe haven for refugees and in protecting the

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[2] John 17:21.

[3] https://www.episcopalarchives.org/cgi-bin/acts/acts_search.pl?user_query=islam.

[4] The Episcopal Church Statement on Interreligious Relations (2009), 10. https://www.episcopalchurch.org/library/document/statement-interreligious-relations.

[5] *Id.*, ¶28.

fundamental principle of religious tolerance embedded in our Constitution. The Bishops urge the Court to affirm the ruling of the Ninth Circuit.

II. INTRODUCTION AND SUMMARY OF THE ARGUMENT

From its earliest inception, America has been a safe haven for victims of religious oppression, in part because religious tolerance is a value enshrined in our Constitution through the Establishment Clause. The third iteration of the President's travel ban currently before the Court, entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," Proc. 9645 (Sept. 27, 2017) ("EO-3"), contradicts those values and undermines the United States' longstanding status as a place of refuge for the world's most vulnerable populations. EO-3 has slammed the door on people who have suffered some of the greatest atrocities in recent times, and it does this solely based on their religion.

From the beginning of his presidential campaign, President Donald J. Trump has called for a "total and complete shutdown of Muslims entering the United States."[6] One week after he took office, the President made good on his threat by issuing an executive order banning everyone but religious minorities from seven

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[6] J.A. 119 (Donald J. Trump, *Statement on Preventing Muslim Immigration* (December 7, 2015)).

majority-Muslim countries (EO-1).[7] In the weeks that followed, the President and his senior advisors confirmed this was his long-promised "Muslim ban."[8]

When it became clear that EO-1 would not pass constitutional muster, the President and his senior advisors revised its text, removed Iraq from the list, and issued it as a new executive order ("EO-2").[9] Despite the Administration's textual gymnastics, the President stood by his Muslim "travel ban," issuing

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[7] *See* Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

[8] *E.g.*, *Full Transcript: President Donald Trump's News Conference*, CNN, Feb. 16, 2017, http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript; Rebecca Shabad, *Donald Trump says he's expanding his Muslim ban*, CBS News (July 24, 2016), http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban; Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans'*, Time (Dec. 21, 2016), http://time.com/4611229/donald-trump-berlin-attack; Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says — and ordered a commission to do it 'legally'*, The Washington Post (Jan. 29, 2017), http://wpo.st/xzuY2.

[9] *See* Protecting the Nation from Foreign Terrorist Entry Into the United States, Exec. Order No. 13,780, 82 Fed. Reg. 13210-11 (Mar. 6, 2017).

numerous statements that revealed his true motivation.[10]

Indeed, President Trump has made numerous, official, post-inaugural statements revealing that the President's true intent is to accomplish exactly what Candidate Trump said he would do as president.

For example, rather than support EO-2 and the "different course" that he had allegedly charted at that time, the President took to Twitter to blame the Department of Justice for "watering down" his "travel ban":

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[10] *See infra* notes 12-14; *see also* Donald J. Trump, @realDonaldTrump, Twitter (June 4, 2017, 4:19 AM EST), https://twitter.com/realdonaldtrump/status/871325606901895168?lang=en ("We must stop being politically correct and get down to the business of security for our people. If we don't get smart it will only get worse[.]"); Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:44 AM EST), https://twitter.com/realdonaldtrump/status/871679061847879682?lang=en ("In any event we are EXTREME VETTING people coming into the U.S. in order to help keep our country safe. The courts are slow and political!"); Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017 6:20 AM EST), https://twitter.com/realdonaldtrump/status/871899511525961728?lang=en ("That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!"); Donald J. Trump, @realDonaldTrump, Twitter (June 13, 2017, 3:44 AM EST), https://twitter.com/realdonaldtrump/status/874578159676665857?lang=en ("Well, as predicted, the 9th Circuit did it again - Ruled against the TRAVEL BAN at such a dangerous time in the history of our country. S.C.").

> People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN![11]
>
> The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.[12]
>
> The Justice Dept. should ask for an expedited hearing of the watered down Travel Ban before the Supreme Court - & seek much tougher version![13]

The President made similar statements in connection with EO-3. Just before he issued EO-3, he announced he was issuing a "larger, tougher and more specific" ban even if it was not "politically correct" to do so.[14] He subsequently retweeted videos entitled "Muslim Destroys a Statue of Virgin Mary!" "Islamist

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[11] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:25 AM EST), https://twitter.com/realdonaldtrump/status/871674214356484096?lang=en.

[12] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:29 AM EST), https://twitter.com/realdonaldtrump/status/871675245043888128?lang=en.

[13] Donald J. Trump, @realDonaldTrump, Twitter (June 5, 2017, 3:37 AM EST), https://twitter.com/realdonaldtrump/status/871677472202477568?lang=en.

[14] J.A. 133.

mob pushes teenage boy off roof and beats him to death!" and "Muslim migrant beats up Dutch boy on crutches!"[15] When the White House Deputy Press Secretary was asked about those videos, he responded that the "President has been talking about these security issues for years now, from the campaign trail to the White House," and that "the President has addressed these issues with the travel order that he issued earlier this year and the companion proclamation."[16]

Petitioners urge the Court to ignore or discount this evidence and consider only the other purportedly legitimate processes culminating in EO-3. In other words, they want the Court "to ignore perfectly probative evidence; they want an absentminded objective observer, not one presumed to be familiar with the history of the [President's] actions and competent to learn what history has to show."[17] But this Court's "precedents sensibly forbid an observer to turn a blind eye to the context in which this policy arose."[18] The President and his senior advisors have

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[15] *IRAP v. Trump*, 883 F.3d 233, 267 (4th Cir. 2018) (en banc).

[16] *Id.*

[17] *McCreary Cnty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005).

[18] *Id.*

been clear in fundraising e-mails,[19] statements to the press,[20] and social media messaging about the intent of his travel ban orders—they are to implement the President's desired "total and complete shutdown of Muslims entering the United States."[21]

The President's consistent statements before and after his election show that the primary purpose behind EO-1, EO-2, and EO-3 is religious animus. As Respondents argue, EO-3 violates the Establishment Clause.[22] The Bishops submit the following historical background and context of the Establishment Clause for the Court's benefit.

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[19] M. Zapotosky, D. Nakamura, & A. Hauslohner, *Revised Executive Order Bans Travelers from Six Muslim-Majority Countries from Getting New Visas*, The Washington Post (Mar. 6, 2017), www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.1f6730369a62.

[20] *Press Briefing by Secretary Sean Spicer, No. 18*, The White House (Mar. 7, 2017), www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18.

[21] Trump, *supra* note 5.

[22] Brief for Respondents at 61-76.

III. ARGUMENT

A. The First Amendment Establishment Clause Enshrines America's Longstanding Role as a Safe Haven for Refugees Fleeing Religious Oppression.

The Founders adopted the Establishment Clause in part to enshrine America's role as a safe haven for victims of religious oppression and to guard against precisely the sectarianism that motivates EO-3. "A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government favored churches."[23] They came here to avoid "turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy."[24] But as life in the Colonies developed, the formerly persecuted became persecutors—often repeating "many of the old world practices and persecutions" they had escaped.[25]

> It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write

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[23] *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 8 (1947).

[24] *Id.*

[25] *Id.* at 10.

> their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.[26]

Virginia's early code of laws imposed fines, whippings, or months in the gallows for failure to attend church twice daily.[27] The early Jews arriving in Maryland from Brazil were denied citizenship, the right to worship, and the right to operate public businesses.[28] In Puritan New England, religious minorities were punished with whippings, ear croppings, and even hangings.[29] "These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence. . . . It was these feelings which found expression in the First Amendment."[30]

The movement towards the Establishment Clause began in earnest in 1785 with a proposal to renew Virginia's tax levy for the support of the established Church of England.[31] In opposition to the proposal, James Madison wrote *Memorial and Remonstrance*, in which he argued that renewing the levy for support of

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[26] *Engel v. Vitale*, 370 U.S. 421, 427 (1962).

[27] PATRICIA U. BONOMI, UNDER THE COPE OF HEAVEN: RELIGION, SOCIETY, AND POLITICS IN COLONIAL AMERICA 36 (2003).

[28] *Id.* at 43.

[29] *Id.* at 44.

[30] *Everson*, 330 U.S. at 11.

[31] *See id.*

the Church was "a dangerous abuse of power."[32] Madison cautioned that renewing the religious tax would be "a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens."[33] He specifically warned that victims of oppression abroad would look elsewhere for refuge if America fell into the trap of establishing a national religion and penalizing those who do not adhere to it:

> What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthrophy [sic] in their due extent, may offer a more certain repose from his Troubles.[34]

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[32] James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html.

[33] *Id.* at ¶ 9.

[34] *Id.* (emphasis added).

Madison's warnings proved extremely effective. Not only was the bill defeated, but the Virginia Assembly enacted Thomas Jefferson's "Virginia Bill for Religious Liberty."[35] Madison's work and ideas spread beyond Virginia and several other colonies considered similar legislation at the time.[36] This movement led to the inclusion of the Establishment Clause in the First Amendment.[37] This is the place in our Constitution that preserves the United States' special role as a beacon of hope and a refuge for the oppressed.

B. EO-3 Undermines the United States' Role as a Safe Haven for Refugees Fleeing Oppression.

Beyond violating the Establishment Clause, EO-1, EO-2, and EO-3 have caused the very harms James Madison identified in his *Memorial and Remonstrance*: they have shaken the world's faith in the United States as a home for people suffering religious, ethnic, political, and other strife.

The day after the President signed EO-1, the United Nations High Commissioner for Refugees issued a statement recognizing that the United States' resettlement program "is one of the most important in the world" and expressing "hope that the U.S. will continue its strong leadership role and long tradition

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[35] *Everson*, 330 U.S. at 12.

[36] *See Engel*, 370 U.S. at 428-29.

[37] *See Reynolds v. United States*, 98 U.S. 145, 162-64 (1878).

of protecting those who are fleeing conflict and persecution."[38] A few days later, the United Nations Secretary General declared that the United States had lost its standing as a leader in refugee resettlement, but he had "hope that the U.S. [would] be able to re-establish its very solid refugee protection in resettlement . . . ."[39] Lawmakers in Indonesia, home to the world's largest Muslim population, decried the EO-1 as an act that will "diminish the U.S. standing [sic] as a beacon for democracy."[40] German Chancellor Angela Merkel likewise remarked that banning travel based on nationality and blocking refugee admissions are "against the core idea of international aid for refugees and international cooperation."[41] The world views the executive orders as a retreat from America's traditional role as the leading safe haven for immigrants and refugees.

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[38] *Joint IOM-UNHCR Statement on President Trump's Refugee Order*, U.N. High Comm'r for Refugees (Jan. 28, 2017), www.unhcr.org/en-us/news/press/2017/1/588bc4e34/joint-iom-unhcr-statement-president-trumps-refugee-order.html.

[39] S. Sengupta, *U.N. Leader Says Trump Visa Bans 'Violate Our Basic Principles,'* N.Y. Times (Feb. 1, 2017), www.nytimes.com/2017/02/01/world/trump-immigration-ban-un.html.

[40] T. Salim, *RI Regrets Trump's Muslim Ban*, The Jakarta Post (Jan. 30, 2017), www.thejakartapost.com/news/2017/01/30/ri-regrets-trump-s-muslim-ban.html.

[41] A. Ansari, N. Robertson, & A. Dewan, *World leaders react to Trump's travel ban*, CNN (Jan. 30, 2017), www.cnn.com/2017/01/30/politics/trump-travel-ban-world-reaction.

EO-3, although different in some respects from EO-1 and EO-2, continues to inappropriately target majority-Muslim countries:

> Despite our clear command in *Hawai'i I*, the Proclamation—like EO-2—fails to "provide a rationale explaining why permitting entry of nationals from the six designated countries under current protocols would be detrimental to the interests of the United States."[42]

C. The Orders Impede the Efforts of Religious Organizations to Render Aid to Refugees.

The three travel ban orders have significantly undermined the efforts of religious organizations in the United States, including the Episcopal Church, to render aid to those fleeing war and oppression. For many Americans, this type of refugee-assistance work is an expression of their faith and one of the ways in which they keep their covenant with God.

Many religious organizations provide a multitude of services to refugees, including coordinating the arrival of refugees to the United States, housing assistance, job training, providing for basic household needs, advocacy, language tutoring, business training, microenterprise loans, and a savings program to help refugees purchase homes, vehicles, education, or

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[42] *Hawaii v. Trump*, 878 F.3d 662, 692 (9th Cir. 2017) (citation omitted).

businesses. All of this was "thrown into chaos" by the executive orders.[43]

The travel ban orders have caused and will continue to cause significant harm to these religious organizations and to the very vulnerable people that they serve. These refugees are fleeing persecution in their countries of origin. The orders have debilitated and will continue to debilitate the vital mission of religious organizations, and will deprive Americans of the opportunity to practice their faith through service to others in need.

IV. CONCLUSION

The President's EO-3 exploits fear, denies the dignity of peoples of different faiths, and deprives Americans of an opportunity to practice their faith through acceptance of and service to others. The order violates the letter and the spirit of the Establishment Clause.

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[43] David Paulsen, *Olympia diocese welcomes refugees, sues to keep resettlement efforts alive* (Feb. 10, 2017), http://episcopaldigitalnetwork.com/ens/2017/02/10/olympia-diocese-welcomes-refugees-sues-to-keep-resettlement-efforts-alive.

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